

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

February 24, 2000

ORDER

CENTRAL MAINE POWER COMPANY
Petition for Disclaimer of Jurisdiction and
Alternative Request for Approval of Property
Sale or transfer

Docket No. 99-928

CENTRAL MAINER POWER COMPANY
Divestiture of Generation Assets – Request
For Approval of sale of Generation Assets

Docket No. 98-058

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We approve Central Maine Power Company's (CMP) plan to divest its 2.5% joint ownership interest in the Millstone 3 nuclear power plant. We also approve CMP's transfer of ownership to the entity that purchases the joint ownership now owned by Northeast Utilities.

II. BACKGROUND

On December 22, 1999, Central Maine Power Company filed a petition asking the Commission to "disclaim jurisdiction" over, or alternatively to approve, the sale or transfer of its interest in the Millstone 3 nuclear power plant.¹ Northeast Utilities (NU), the majority owner of the Millstone 3 plant, is attempting to divest its ownership share through a bid auction process conducted by the Connecticut Department of Public Utilities Control (DPUC). CMP and other minority owners of Millstone 3 have sued NU, alleging that NU's unreasonable operation of the Millstone 3 power plant during the 1990s resulted in the plant's shutdown and continued NRC regulatory problems. CMP and NU have reached a settlement under which CMP drops all claims against NU concerning NU's operation of the plant, CMP transfers its 2.5% ownership of the plant to the bidder who purchases NU's share, and NU pays CMP an agreed amount of money when the settlement is executed and an additional amount after closing on the transfer of NU's and CMP's Millstone shares to the purchaser.²

CMP asked the Commission to disclaim jurisdiction over this transaction because, after March 1, 2000 when the actual transfer of its ownership share will take

¹ CMP seeks similar treatment for its interest in the Vermont Yankee Atomic Power Plant. That request will be dealt with separately from the Millstone 3 request.

² The settlement agreement, including payment amounts, is confidential.

place, generating plants such as Millstone 3 are not necessary and useful and therefore not subject to the section 1101 approval requirement. Alternatively, if the Commission decides approval is required, CMP asks the Commission to approve the proposed transfer of Millstone 3 and leave open all ratemaking issues to the next stranded costs investigation.

As a preliminary matter, the Examiner ruled that the Restructuring Act required CMP to divest its generation assets by means of a divestiture plan which required approval of the Commission pursuant to 35-A. M.R.S.A. § 3204. The Examiner treated CMP's request in Docket 99-928 as a request for a supplemental order to amend the divestiture plan approved by the Commission in Docket 97-523, which was executed by CMP in an Asset Purchase Agreement with FPL Energy Maine, Inc. and approved by the Commission in Docket No. 98-058. The Examiner provided notice of CMP's petition to the parties in Docket 98-058 and provided those parties with an opportunity to comment on or object to CMP's proposed amended divestiture plan with respect to Millstone 3 and CMP's proposed deferral of ratemaking issues arising from its divestiture of Millstone 3. No comments or objections were filed by any party.

About the same time as the deadline for comments or objections were due in Docket No. 99-928, the parties to Phase II-B of Docket No. 97-580, the CMP transmission and distribution (T&D) rate case, filed a stipulation that, among other things, provides for the ratemaking treatment of CMP's proposed divestiture of Millstone 3. In addition to the proper ratemaking to be accorded the CMP/NU settlement agreement and CMP's transfer of ownership to NU's purchaser, the stipulating parties agreed that CMP could offset its regulatory asset relating to the impairment of Millstone 3, its non-provided deferred income taxes on Millstone 3, and its material and supplies account associated with Millstone 3, against the Asset Sale Gain Account.³ Given that the parties in Docket 97-580 have reached agreement as to the proper ratemaking treatment for CMP's proposed divestiture of Millstone 3, the parties impliedly recommend our approval of CMP's divestiture plan for Millstone 3.

III. DECISION

We agree with the Examiner that the divestiture of CMP's Millstone 3 generation asset should be accomplished as an amendment to CMP's divestiture plan, which by the Restructuring Act requires Commission approval. We find that CMP's plan to divest its Millstone 3 generation asset in conjunction with the settlement of the ongoing litigation between CMP (and other minority owners) and NU and the auction conducted by the Connecticut DPUC to divest NU's Millstone 3 share, is consistent with CMP's obligations under the Restructuring Act to obtain the highest possible value for Millstone 3, in a way that CMP also reasonably mitigates its potential stranded costs. Accordingly, we approve CMP's divestiture plan for Millstone 3 and CMP's transfer of ownership of Millstone 3. Essential to our finding that CMP's transfer of its Millstone 3

³ The Asset Sale Gain Account also has been described as the available value from CMP's sale of its generation assets.

ownership to NU's purchaser is reasonable and prudent is our reliance on CMP's understanding that ¶1.7 of the Settlement Agreement avoids potential future liabilities for Millstone 3 decommissioning and spent fuel storage costs beyond the decommissioning-cost responsibility specifically provided for within ¶1.7.

By an Order issued in CMP's T&D rate case, Docket No. 97-580, issued concurrently with this Order, we approve the stipulation that includes the ratemaking treatment for the Millstone 3 divestiture. Accordingly, CMP's request to defer the ratemaking treatment for Millstone 3 divestiture is now moot. We explain our reasons for accepting the stipulated ratemaking treatment for CMP's proposed Millstone 3 divestiture in the Docket 97-580 Order.

Accordingly, we

ORDER

1. That CMP's proposed divestiture plan for the divestiture of its Millstone 3 investment is approved; and
2. That CMP is authorized to transfer its interest in the Millstone 3 nuclear power plant to the purchaser of NU's interest in the Millstone 3 nuclear power plant as selected by the Connecticut DPUC.

Dated at Augusta, Maine, this 24th day of February, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent
Diamond

THIS ORDER HAS BEEN DESIGNATED FOR PUBLICATION

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.